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OCT 23 2006
FEDERAL ELECTION COMMISSION
SECRETARIAT

BEFORE THE FEDERAL ELECTION COMMISSION

2006 OCT 23 A 11: 35

In the Matter of:)
)
Huffman for Congress and)
David Blanton,¹ in his official capacity)
as treasurer)
Lawrence David Huffman)
Dean Proctor)
Peoples Bank²)

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SENSITIVE

GENERAL COUNSEL'S REPORT # 2

I. ACTIONS RECOMMENDED

1. [REDACTED]

2. Take no further action and close the file as it pertains to Peoples Bank.

II. BACKGROUND

This matter involves loans obtained by a candidate for the U.S. House of Representatives for use in his federal campaign.³ The Commission found reason to believe that Huffman for Congress and David Blanton, in his official capacity as treasurer (the "Committee"), violated 2 U.S.C. §§ 434(b), 441a(f), 441b and 441f; that candidate Lawrence David Huffman violated

¹ Michael Sherill was the treasurer for Huffman for Congress from January 15, 2004, until October 7, 2004, when he was replaced by David Blanton.

² The First General Counsel's Report referred to the bank as "People's State Bank." For purposes of accuracy, the bank has clarified that its correct legal name is "Peoples Bank" and that it is owned by Peoples Bancorp of North Carolina, Inc. See Peoples Bank Response of August 12, 2005 ("Peoples Response of Aug. 12, 2005").

3 [REDACTED]

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1 2 U.S.C. § 441b and knowingly and willfully violated 2 U.S.C. §§ 441a(f) and 441f ; that Dean
2 Proctor knowingly and willfully violated 2 U.S.C. §§ 441a(a)(1) and 441f ; and that Peoples
3 Bank ("Peoples") violated 2 U.S.C. § 441b.

4 At the time of the findings, the information available indicated that Mr. Huffman
5 obtained a \$100,000 loan through a third party, Dean Proctor, which exceeded contribution
6 limits.⁴ There was also information that a separate \$100,000 loan Mr. Huffman obtained from
7 Peoples did not appear to have been made on a basis that assured repayment. The reason to
8 believe findings also include reporting violations concerning the disclosure of two candidate
9 loans: the \$100,000 loan from Peoples and a separate \$150,000 loan from Branch Banking and
10 Trust Company ("BB&T"). The Committee had reported a candidate loan consisting of
11 \$100,000 in its 2004 reports as coming from personal funds and did not disclose Peoples as the
12 original source of the funds. Further, the Committee did not disclose the collateral that was used
13 to secure a \$150,000 line of credit the candidate obtained for his campaign.

14 As discussed below, we obtained sufficient information from the Respondents to confirm
15 that violations of the Act took place with respect to the loan from Dean Proctor and the reporting
16 violations. However, there is insufficient information to indicate that the violations pertaining to
17 the Dean Proctor loan were knowing and willful. [REDACTED]

18 [REDACTED]
19 [REDACTED] Our investigation also revealed evidence that
20 the loan from Peoples was made under an assurance of repayment. Therefore, we recommend
21 that the Commission take no further action with regard to the 441b reason to believe finding as it
22 pertains to Peoples, the candidate and the Committee.

⁴ The Commission's reason to believe findings were based on information obtained from the Respondents by way of a *sua sponte* submission, from information contained in two complaints filed with the Commission and from publicly available information.

III. RESULTS OF INVESTIGATION

All of the Respondents in this matter have been cooperative in providing information relevant to the violations and in answering our questions. [REDACTED]

A. Peoples Bank Renewal Loan

The Commission found reason to believe that a violation took place in connection with a \$100,000 loan that Peoples made to the candidate. Although the original loan made on March 30, 2004 was made with the use of cash collateral, that collateral was released when the loan was renewed on June 30, 2004. Thus, the renewal loan was unsecured and appeared to have been made without an assurance of repayment. Lance Sellers, Chief Banking Officer and Executive Vice President for Peoples, responded to the reason to believe finding on behalf of the bank. The information Peoples provided confirms that the transaction concerning the June 30, 2004 renewal loan was conducted in the bank's ordinary course of business and with an assurance of repayment.

Peoples explained that on July 19, 2004, the candidate indicated that he wanted to use the loan proceeds from the original March 30, 2004 loan. Peoples Response of Aug. 12, 2005. At the time, the loan proceeds remained on deposit in a certificate of deposit that was serving as collateral for the March 30, 2004 loan. The original ninety-day loan was renewed for another ninety days and Mr. Huffman received the loan proceeds on July 21, 2004. See Peoples Reason to Believe Response ("Peoples RTB Response"); People's Response of Aug. 12, 2005. Pursuant to the bank's normal business practices, the renewal loan was backdated to be effective on

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1 June 30, 2004, the maturity date of the original loan. *See* Peoples Response of Aug. 12, 2005.

2 Peoples conducted an in-depth review of Mr. Huffman's financial background as part of
3 the June 30, 2004 renewal loan transaction,⁵ and looked for sources of repayment prior to
4 granting the unsecured renewal loan. *See* Peoples RTB Response; Lance Sellers Affidavit of

5 June 7, 2005 ("Sellers Affidavit") at 1-2; and Peoples Response of Aug. 12, 2005. Specifically,

6 Peoples reviewed the candidate's House of Representatives Financial Disclosure Statement

7 ("Financial Statement"), which the candidate attached to the bank loan application, the

8 candidate's credit score and credit history, the candidate's mortgage information, and the

9 candidate's account balance on his retirement account. *See* Peoples RTB Response; Sellers

10 Affidavit at 2; and Peoples Response of Aug. 12, 2005. At the time, Mr. Huffman had an annual

11 salary of [REDACTED] as Sheriff of Catawba County, North Carolina, and had a credit score of [REDACTED]

12 out of a maximum of [REDACTED]. Peoples Response of Aug. 12, 2005. Further, at the time

13 Mr. Huffman's home had a tax value of [REDACTED] with an outstanding mortgage balance of

14 [REDACTED] The candidate also agreed to use funds from his retirement savings to repay the loan.⁶

15 *See* Peoples RTB Response; Sellers Affidavit; Peoples Response of Aug. 12, 2005. On his

16 Financial Statement, Mr. Huffman indicated that his retirement account balance from a 401(k)

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⁵ Peoples account officer, Cliff Wilkes, explains that because the bank initially had cash collateral for the loan, neither a personal financial statement nor a credit bureau report was required during the original loan transaction in March. *See* Peoples Response of Aug. 12, 2005.

⁶ From the time of the original loan in March 2004, Mr. Huffman orally agreed to repay the loan from proceeds from campaign fundraising. However, if the campaign funds were not sufficient, he agreed to use the funds from his 401(k) account. Sellers Affidavit at 1.

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1 plan was over [REDACTED] and that he had additional funds in a traditional bank account.⁷ Peoples
2 received written verification of the 401(k) balance on August 9, 2004. According to the written
3 documentation from the account administrator, the balance on Mr. Huffman's North Carolina
4 401(k) plan was [REDACTED] and Mr. Huffman could start making withdrawals from the account
5 without penalty in March 2005. Peoples RTB Response; Peoples Response of Aug. 12, 2005.

6 Based on his financial information, it appears that Mr. Huffman had sufficient assets to
7 cover the \$100,000 loan. Further, Mr. Huffman had a good payment history with the bank.
8 Peoples Response of Aug. 12, 2005. He paid off the interest accrued on the March 30, 2004 loan
9 on June 30, 2004; in addition, he had cosigned loans for his children in the past that were later
10 paid off as agreed. *Id.* As a result, Peoples considered him a good credit risk for the loan, was
11 satisfied that he had sufficient sources of repayment, and was confident that he would repay the
12 loan as promised. *See* Peoples RTB Response; Sellers Affidavit; Peoples Response of Aug. 12,
13 2005. According to Peoples, Mr. Huffman was current on his payments with the bank and had
14 been using funds from his retirement account to repay the loan, which strengthens the bank's
15 position that it was assured repayment. Peoples Response of Aug. 12, 2005.

16 Additionally, Peoples' transaction with Mr. Huffman did not appear to deviate from its
17 normal business practices. Peoples' Consumer Credit Manual requires that a risk analysis be
18 undertaken prior to extending any consumer loans. Peoples Response of Aug. 12, 2005. Such an
19 analysis includes looking for a "realistic plan of repayment based on the source of repayment."
20 *Id.* Further, the bank makes "unsecured loans to customers of acceptable risk where identifiable

⁷ Peoples added a hand stamped statement onto Huffman's Financial Statement. Mr. Huffman's signature immediately follows the statement, indicating that he agreed with it. The statement reads as follows:

This financial statement has been submitted to Peoples Bank for purposes of [sic] /maintaining credit. Any willful misrepresentation on this statement could result in fine and/or imprisonment under provisions of the United States Criminal Code.

See Peoples RTB Response, Attachment (copy illegible).

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1 sources of repayment are apparent” and have in fact “made similar loans to other customers of
2 the [b]ank.” *Id.* Specifically, “out of 3,637 new loan[s] [Peoples] made in 2004, 1,530 were
3 unsecured loans.”⁸ *Id.*

4 The Federal Election Campaign Act of 1971, as amended (“the Act”), permits banks to
5 make loans to candidates and committees provided that the loans are made in the ordinary course
6 of business. A loan is made in the ordinary course of business when, among other things, it is
7 made on a basis that assures repayment.⁹ 11 C.F.R. § 100.82(a). Loans are made on a basis that
8 assures repayment if there is sufficient collateral, the bank has a perfected security interest in that
9 collateral and the fair market value of the collateral is equal to or greater than the loan amount
10 and any senior liens. 11 C.F.R. § 100.82(e)(1). Alternatively, banks can assure repayment by
11 obtaining a written agreement in which the candidate pledges future receipts to the bank.
12 11 C.F.R. § 100.82(e)(2). Where none of these conditions exist, however, the Commission can
13 also examine each loan on a case-by-case basis, based on the totality of the circumstances, to
14 determine whether it was made on a basis that assures repayment. 11 C.F.R. § 100.82(e)(3);
15 *see* Advisory Opinion 1994-26 (Cunningham); Explanation and Justification, *Loans from*
16 *Lending Institutions to Candidates and Political Committees*, 56 Fed. Reg. 67118 (1991).

17 In considering the totality of the circumstances, the Commission will examine evidence
18 of a pre-existing relationship between the lending institution and the candidate, and whether the
19 terms of the agreement appear to be unduly favorable to the candidate, among other factors.

⁸ Review of Commission records also reveals that none of the bank's directors and officers made contributions to the Huffman campaign.

⁹ Loans must also bear the usual and customary interest rate of the lending institution for the category of the loan involved, must be evidenced by a written instrument, and be subject to a due date or amortization schedule.
11 C.F.R. § 100.82(a). These additional requirements were addressed in the FGCR, where it was determined that the Peoples loan satisfied these requirements.

1 See Advisory Opinion 1994-26 (Cunningham). The Commission has typically found no
2 violation where, under the totality of the circumstances test, there was sufficient evidence
3 demonstrating that the bank intended assurance of repayment in making the loan to the
4 candidate. For example, in MUR 5262 (Ryan) the Commission found, based on the totality of
5 the circumstances, no reason to believe that Second National Bank violated the Act when it made
6 a loan to the candidate for his campaign without direct collateral. Prior to issuing the loan, the
7 bank in that matter examined the credit history and prior banking relationship of the candidate.
8 Based on that analysis, the bank ultimately required a co-signer with a solid credit history and
9 prior banking relationship with them on the loan. MUR 5262, FGCR at 8-10. The Commission
10 determined that it appeared the bank intended to assure repayment of the loan. *Id.* at 9.

11 In MUR 5381 (Bishop), the Commission found, based on a totality of the circumstances,
12 no reason to believe that America First Credit Union violated the Act when it granted a signature
13 loan to the candidate. In that matter, the candidate's loan was made without direct collateral.
14 However, the information available revealed the transaction with the candidate included an
15 analysis of his creditworthiness and that the loan was made on the same terms and conditions as
16 loans granted to other customers. See MUR 5381 (Bishop), FGCR at 23-24; see also MUR 5453
17 (Giordano), FGCR at 6 (finding that the bank followed its internal procedures and guidelines in
18 making the candidate loan); MUR 5198 (Cantwell), FGCR at 9 (finding the loan was made on a
19 basis that assured repayment where the bank considered the candidate's net worth, assets, pre-
20 existing relationship with the bank and payment history on previous transactions).

21 Based on the foregoing, it appears that Peoples satisfied the totality of the circumstances
22 requirement in 11 C.F.R. § 100.82(e)(3), consistent with Commission precedent. Peoples made
23 the \$100,000 loan to Mr. Huffman on a basis that assured repayment following a financial

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1 assessment of the candidate's creditworthiness, assets, payment history, and pursuant to the
2 bank's standard business practices. Thus, we recommend the Commission take no further action
3 with regard to Peoples Bank, Lawrence David Huffman, and Huffman for Congress and David
4 Blanton, in his official capacity as treasurer, pertaining to the 2 U.S.C. § 441b reason to believe
5 finding concerning the June 30, 2004 renewal loan and that it close the file as it pertains to
6 Peoples Bank.

7 **B. \$100,000 Loan from Dean Proctor**

8 The knowing and willful findings from the FGCR pertain to the \$100,000 loan Dean
9 Proctor obtained from BB&T and thereafter provided to Mr. Huffman. There is no dispute that
10 Messrs. Proctor and Huffman violated 2 U.S.C. §§ 441a and 441f here: Mr. Proctor made an
11 excessive contribution by giving \$100,000 to the candidate. Upon receiving the funds,
12 Mr. Huffman deposited the money into his own bank account and then gave his campaign the
13 same amount of funds in his own name.

14 However, there was a question as to whether Proctor and Huffman acted knowingly and
15 willfully. In our initial meeting with Respondents and in the Committee's *sua sponte*
16 submission, Proctor maintained that when confronted by a staff person for an opposing
17 campaign, he freely admitted that he was the source of the \$100,000. As we noted in the FGCR,
18 this was not the act of a man willfully attempting to cover up a contribution in the name of
19 another. However, because Proctor's account was uncorroborated, and because there were
20 potential inconsistencies in Proctor's explanations as to why the transaction was structured as it
21 was, in the interest of fair notice to the Respondents the Commission found reason to believe that
22 the violations concerning the Dean Proctor loan were knowing and willful. FGCR at 18.

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1 Gaye Watts, the staff person from the opposing campaign, verified Mr. Proctor's version
2 of events. Ms. Watts explained that both Mr. Huffman and Mr. Proctor were family friends of
3 hers. [REDACTED]. However, in
4 2004 she worked as a fundraiser for the campaign of Sandy Lyons, one of Huffman's opposing
5 candidates in the primary election who is also one of the complainants in this matter.¹⁰ Her
6 duties for the Lyons campaign involved closely monitoring the funds raised by the other
7 campaigns. The Lyons campaign also employed an investigator to assist in that regard. In
8 examining the Huffman campaign's 2004 July Quarterly Report, Ms. Watts and the investigator
9 noticed a \$100,000 loan dated June 17, 2004 that was reported as coming from the candidate's
10 personal funds. *Id.* at 2; Watts Affidavit dated June 27, 2005 at 1 ("Watts Affidavit"). Upon
11 further inquiry, and after not being able to find a paper trail for the loan, they heard rumors that
12 Mr. Proctor had actually funded the loan. [REDACTED] Watts Affidavit at 1.

13 Ms. Watts explained that she confronted Mr. Proctor about the funds on a Saturday
14 morning in mid-July.¹¹ She visited him at his home and requested an explanation about the
15 source of the \$100,000 loan. [REDACTED] According to Ms. Watts, Mr. Proctor
16 "immediately told [her] that he had obtained the funds on his line of credit and given the funds to
17 David Huffman for his campaign." Watts Affidavit at 1. He also explained that he drew on his
18 own line of credit because the candidate had been traveling out of town at the time and that it
19 was just easier for him [Proctor] to get the money rather than go through all of the bank

¹⁰ Ms. Watts worked as a fundraiser for federal campaigns for around 12 years, mostly as a volunteer. She is a teacher by profession. [REDACTED] She began working for the Lyons campaign before Mr. Huffman had announced his candidacy. *Id.* at 2.

¹¹ Ms. Watts could not recall the exact date of her meeting with Mr. Proctor. However, she did remember that it had been in July prior to the July 21, 2004 primary election. [REDACTED] The Respondents state that the encounter took place on Saturday, July 17, 2004. *See Sua Sponte Documents.*

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1 paperwork. [REDACTED] Ms. Watts immediately informed him that the transaction was
2 illegal and said, "Do you know that you can go to jail?" *Id.* Ms. Watts described that
3 Mr. Proctor "seemed genuinely surprised to find out that he couldn't legally do what he had
4 done." Watts Affidavit at 2. Proctor immediately stated that he did not know it was illegal and
5 told her that he would take the necessary steps to make sure it was corrected by Monday. [REDACTED]
6 [REDACTED] Watts Affidavit at 2. Based on his reaction, and her prior friendship with him, Ms.
7 Watts did not believe that Mr. Proctor intentionally violated the law. [REDACTED] Watts
8 Affidavit at 2. Nevertheless, Ms. Watts warned Mr. Proctor that her campaign was going to the
9 media with the information about the loan [REDACTED]

10 Moreover, potential inconsistencies in Proctor's story appear, at least partially, to be
11 resolved. Prior to the reason to believe finding, Mr. Proctor had provided two reasons for
12 drawing on his own line of credit: to make the Committee's financial position look stronger in
13 its next disclosure report and because of the increasing expenses of the campaign. FGCR at 17-
14 18. These reasons appeared potentially inconsistent: a campaign that wanted to increase the
15 amount of cash on hand it reported would have to hold the money in its bank account, not spend
16 it on "increased expenses."

17 However, two affidavits by Committee staff members indicate that both reasons that
18 Mr. Proctor provided to the Commission prior to the reason to believe finding were valid.
19 Campaign manager Jamie Parsons and campaign consultant Brian Chatman each described a
20 meeting that included themselves, the candidate, and Dean Proctor. According to Mr. Parsons,
21 the four of them "discussed the fact that the campaign expenses were going to be ratcheting
22 upward within the next several weeks as the July primary date approached." Parsons Affidavit
23 dated June 24, 2005 ("Parsons Affidavit"). Mr. Chatman adds that they also discussed the

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1 possibility of a runoff election; Mr. Chatman stated that they discussed that "the candidate, might
2 need to borrow money from a local bank to loan to the campaign so that we would have a strong
3 cash position on our June 30 FEC report and also have money for television for the runoff if a
4 runoff occurred." Chatman Affidavit dated June 27, 2005 ("Chatman Affidavit"). According to
5 both affidavits, they discussed the need for the candidate to borrow funds from a bank to loan to
6 the campaign and Mr. Proctor volunteered to work on arranging for a bank loan to the candidate.
7 The funds were deposited in the Committee's bank account shortly thereafter, but neither
8 Mr. Parsons nor Mr. Chatman was aware of the arrangements made to obtain the funds.
9 See Parsons Affidavit; Chatman Affidavit. Based on these affidavits, it appears that only
10 Mr. Proctor and the candidate were aware of the loan arrangements.

11 Thus, Parsons and Chatman both confirm that there was a meeting in mid-June, or at
12 roughly the same time that Proctor drew the \$100,000 and gave it to Huffman, to discuss the
13 Committee's financial position. Both confirm that the meeting concerned, among other things,
14 the Committee's eventual need for more cash to spend, apparently after July 1, and Chatman
15 avers that the need for a strong cash position in the Committee's next disclosure report – for
16 which the books closed at the end of June – was also discussed. We still do not know why
17 Proctor felt the need to obtain the money so soon, when the close of books was two weeks off, or
18 why Huffman did not simply fill the Committee's need for cash by transferring to the Committee
19 the \$100,000 on reserve under his name at Peoples Bank. But Watts confirms that Proctor made
20 no attempt to hide that he was the true source of the money and, as noted, that indicates a lack of
21 willful intent by Proctor, Huffman or the Committee.

22 Thus, the information we uncovered during the course of our investigation is not
23 sufficient to show that Mr. Proctor and the candidate knowingly and willfully violated the Act

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1 with regard to the Proctor loan transaction. The phrase "knowing and willful" indicates that
 2 "actions [were] taken with full knowledge of all of the facts and a recognition that the action is
 3 prohibited by law." 122 Cong. Rec. H 3778 (daily ed. May 3, 1976); *see also Fed. Election*
 4 *Comm'n v. John A. Dramesi for Cong. Comm.*, 640 F. Supp. 985, 987 (D.N.J. 1986)
 5 (distinguishing between "knowing" and "knowing and willful"). The explanations provided by
 6 campaign staff and information derived from other sources lend support to the Respondents'
 7 assertion that they did not know that their transaction was illegal. In a sworn affidavit,
 8 Mr. Proctor stated that he "was not aware there was anything wrong with handling the
 9 transaction in th[at] manner." Proctor Affidavit at 1. Both Mr. Huffman and Mr. Proctor add
 10 that the "erroneous transaction was inadvertent and resulted from not knowing the intricacies of
 11 the FEC rules." *Id.* at 2; Huffman Affidavit dated Feb. 25, 2005 ("Huffman Affidavit"), at 2.
 12 *See also* Parsons Affidavit and Chatman Affidavit.

13 Their lack of experience in federal campaigns may have also played a role in the
 14 violation. Except for making contributions to federal campaigns, Mr. Proctor did not have any
 15 experience with federal campaign finance. Proctor Affidavit; Committee RTB Response.
 16 Further, although the candidate had previously worked as a volunteer for the Richard Burr House
 17 campaign and the Elizabeth Dole Senate campaign, he had not been responsible for any financial
 18 aspects of those campaigns.¹² Parsons Affidavit at 2. It also appears that the Committee did not
 19 have the advice of legal counsel until after the illegality of the Dean Proctor loan came to light.
 20 *See id.* at 1-2; Chatman Affidavit; Proctor Affidavit.

21 Further, the Respondents took steps to correct the transaction immediately after

¹² Mr. Parsons, the Committee's campaign manager, had also never worked for any political campaigns prior to the Huffman campaign. Parsons Affidavit at 2.

1 Mr. Proctor learned that the transaction was illegal. Upon learning about the illegal nature of the
2 transaction on Saturday, July 17, 2004, the Respondents consulted with counsel on Sunday,
3 July 18, refunded the money to Mr. Proctor on Monday, July 19, and contacted the Commission
4 on Tuesday, July 20. *See Sua Sponte* Documents and Committee RTB Response. Mr. Huffman,
5 Mr. Proctor, Mr. Parsons, and counsel for the Committee then met with staff from the Office of
6 General Counsel on July 30, 2004. The Commission received the complaints on July 30, 2004
7 and August 4, 2004. The Respondents' actions, taken together with the information gathered
8 throughout the investigation (i.e., no inconsistent statements and the candidate's statements
9 regarding the source of his campaign funds are indeed supported by the Committee's reports to
10 the Commission), do not indicate that the violations were knowing and willful. [REDACTED]

11 [REDACTED]
12 [REDACTED]
13 **C. Reporting Violations**

14 Our investigation confirmed that the reporting violations cited in the FGCR did occur.
15 Specifically, the Committee failed to disclose Peoples as the original source of the funds for the
16 \$100,000 loan of July 2004. Further, although the Committee indicated in its *sua sponte*
17 documents that the \$150,000 line of credit from BB&T was to be secured by real property owned
18 by the candidate, the Committee's reports to the Commission did not disclose any collateral as
19 part of that transaction. The Committee, however, has since corrected each of these reporting
20 errors. Therefore, at this time, we recommend entering into pre-probable cause conciliation with
21 the Committee.

22 The Act requires a committee to report loans from the candidate in its reports to the
23 Commission and to disclose any financial institution that is the secondary source of those funds.

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1 2 U.S.C. § 434(b); 11 C.F.R. §§ 104.3(a)(3)(vii)(B) and (d)(4). If the funds were derived from a
2 lending institution, the committee must include a Schedule C-1 with its reports to the
3 Commission disclosing the terms of the original loan to the candidate. 11 C.F.R. § 104.3(d)(4).
4 In this matter, it appears that there was some confusion over the proper reporting of the \$100,000
5 loan from Peoples. Initially, the Committee incorrectly reported the funds as a loan from the
6 candidate in its 2004 April Quarterly Report. As previously discussed in the FGCR, although the
7 candidate secured the Peoples loan on March 30, 2004, he did not provide the funds to the
8 Committee until July 19, 2004. *See* FGCR at 10. It was only once the Committee obtained the
9 funds derived from the loan that it was required to report the details of the loan. *Id.*

10 Mr. Huffman eventually loaned the Committee the funds from the March 30, 2004 loan,
11 which were being held in a certificate of deposit, in July 2004. The Committee states that it
12 reported the use of the funds according to the instructions received from RAD, which did not
13 require the Committee to identify the bank in its reports to the Commission. *See* Committee
14 RTB Response at 3 and Exhibit 7. However, in conversations with RAD, we learned that the
15 analyst based his instructions on incomplete information. At the time he instructed the
16 Committee on this issue, the analyst was not aware that the funds from the certificate of deposit
17 were originally derived from a bank loan. Rather, RAD's instructions were based on the
18 assumption that the funds in the certificate of deposit were the candidate's personal funds. Thus,
19 the Committee's initial Pre-Runoff report covering the period of July 1 through July 28, 2004
20 reported a loan from the candidate in the amount of \$100,000 but failed to disclose Peoples as
21 the actual source of the funds or to include a Schedule C-1 disclosing the terms of the loan, in
22 violation of 2 U.S.C. § 434(b) and 11 C.F.R. § 104.3(d)(4). On August 6, 2005, the Committee

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1 filed an amended Pre-Runoff report disclosing the bank loan and including the requisite
2 Schedule C-1.

3 In its *sua sponte* submission, the Committee also indicated that Mr. Huffman obtained a
4 \$150,000 line of credit for use in his campaign from BB&T that was to be secured by his
5 personal residence. At the time of the *sua sponte* submission, the credit line had not yet been
6 secured. However, a letter from BB&T included as part of the Respondents' submission
7 confirms that the use of the personal residence as collateral was intended as a term of the loan.
8 *See Sua Sponte Documents*. The Commission made a reason to believe finding with regard to
9 reporting violations concerning this loan; at the time of the finding, the Committee still had not
10 disclosed the use of any collateral in its reports to the Commission. Since then the Respondents
11 have provided copies of documentation filed with Catawba County, North Carolina, indicating
12 that the line of credit was indeed secured by Mr. Huffman's personal residence on September 7,
13 2004.¹³ *See Committee/Huffman Response of August 5, 2005*. However, the Committee did not
14 properly report the use of this collateral in its original 2004 October Quarterly Report to the
15 Commission, in violation of 2 U.S.C. § 434(b) and 11 C.F.R. § 104.3(d)(4). The Committee
16 corrected this error by properly disclosing the collateral to the Commission in an amended 2004
17 October Quarterly Report filed on August 6, 2005.

¹³ There was a time lapse between the original loan transaction with BB&T and the time the line of credit was actually secured with the candidate's personal residence, which resulted in an unsecured line of credit for a period of seven weeks. This may be considered a violation under the Act if the loan was not made on a basis that assures repayment. This transaction, however, would most likely satisfy the Commission's requirements under a totality of the circumstances analysis. It appears that BB&T limited its own risk in the transaction by initially granting the line of credit for a period of only one month, at which time the entire principal plus any accrued interest would be due to the bank. The loan period was then extended for a year when the candidate's personal residence was legally placed as collateral. Thus, we recommend the Commission exercise its prosecutorial discretion and take no action with regard to this transaction.

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V. RECOMMENDATIONS

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]
4. Approve the attached conciliation agreements.
5. Take no further action against Lawrence David Huffman and Huffman for Congress and David Blanton, in his official capacity as treasurer, with regard to the 2 U.S.C. § 441b reason to believe findings.
6. Take no further action against Peoples Bank with regard to the 2 U.S.C. § 441b reason to believe finding and close the file as it pertains to this Respondent.
7. Approve the appropriate letters.

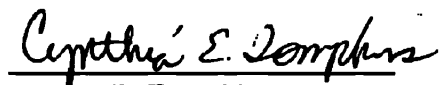
Lawrence H. Norton
General Counsel

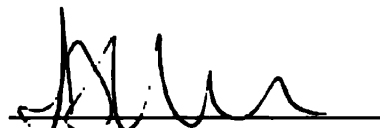
Date

10/20/06

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